

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERNESTO AMBRIZ,) Civil No. 10cv460 L(WMc)
Plaintiff,)
v.) **ORDER DENYING AS MOOT
ACCREDITED HOME LENDERS, INC., et al., Defendants.) MOTION TO DISMISS FIRST
and GRANTING MOTION TO EXPUNGE LIS PENDENS [doc. #14];
and GRANTING *EX PARTE* MOTION FOR REQUEST FOR RULING [doc. #25]**
Defendants.)

On May 28, 2010, defendants Vericrest Financial, Inc. fka The CIT Group and The Bank of New York Mellon fka The Bank of New York filed motions to dismiss the first amended complaint (“FAC”) and to expunge lis pendens. Plaintiff failed to oppose the motions as required under the Civil Local Rules. Instead, on August 24, 2010, plaintiff filed a notice of voluntary dismissal without prejudice under Federal Rule of Civil Procedure 41(a). The notice of voluntary dismissal moots defendants’ motion to dismiss; however, dismissal of the complaint does not expunge the recorded lis pendens. As a result, defendants request a ruling on the motion to expunge the lis pendens.

Plaintiff recorded a lis pendens on the property at issue under California Civil Code §§ 405.31 and 405.32. A lis pendens effectively prevents a sale or encumbrance of the property until litigation is resolved or the lis pendens is expunged. *See Kirkeby v. Superior Court*, 33 Cal. 4th 642, 651 (2004).

1 A court "shall order the notice [of pendency] expunged if . . . the pleading on which the
 2 notice is based does not contain a real property claim." CAL. CIV. CODE § 405.31. A "real
 3 property claim" is defined, *inter alia*, as a cause of action "which would, if meritorious, affect . . .
 4 . title to, or the right to possession of, specific real property . . ." CAL. CIV. CODE § 405.4. A
 5 plaintiff bears the burden of establishing, by a preponderance of the evidence, the probable
 6 validity of the claims.

7 Because the operative complaint has been voluntarily dismissed, plaintiff has alleged no
 8 "real property claim." Accordingly, the lis pendens is properly expunged.

9 Based on the foregoing, **IT IS ORDERED**

10 1. Defendants' motion to expunge lis pendens is hereby **GRANTED** [doc. #14];
 11 2. Defendants' motion to dismiss the first amended complaint is **DENIED AS**
 12 **MOOT** [doc. #13];

13 3. The Lis Pendens recorded on December 24, 2009, as Instrument No. 20090301187
 14 in the official records of San Diego County shall be expunged from the official records, and a
 15 copy of this Order may be recorded in the official records.

16 The Lis Pendens concerns the real property commonly known as 507 Twin Palm Circle,
 17 Fallbrook, California 92028, located in San Diego County with the following legal description:

18 "PARCEL 1:

19 THAT PORTION OF THE WEST HALF OF THE SOUTHEAST
 20 QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24,
 21 TOWNSHIP 9 SOUTH, RANGE 4 WEST, SAN BERNARDINO
 22 MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF
 23 CALIFORNIA, ACCORDING TO THE OFFICIAL PLOT
 24 DESCRIED AS FOLLOWS: BEGINNING ON A POINT ON THE
 25 WEST LINE OF SAID WEST HALF OF THE SOUTHEAST
 26 QUARTER OF THE NORTHEAST QUARTER OF THE
 27 SOUTHEAST QUARTER WHICH IS SOUTH 00 DEGREES
 28 22'45" WEST, 136.92 FEET FROM THE NORTHEAST CORNER
 THEREOF; THENCE ALONG SAID WEST LINE SOUTH 00
 DEGREES 22'45" WEST 73.93 FEET; THENCE PARALLEL
 WITH THE NORTH LINE OF SAID WEST HALF OF THE
 SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF
 THE SOUTHEAST QUARTER SOUTH 89 DEGREES 07"30"
 EAST 134.35 FEET; THENCE NORTH 00 DEGREES 22'45"
 EAST 79.79 FEET TO A LINE WHICH BEARS SOUTH 89
 DEGREES 07'30" EAST FROM THE POINT OF BEGINNING;
 THENCE NORTH 89 DEGREES 07'30" WEST 134 FEET TO THE

1 BEGINNING.
2

3 PARCEL 2:
4

5 AN EASEMENT AND RIGHT OF WAY FOR ROAD AND PIPE
6 LINE PURPOSES TO BE USED IN COMMON WITH THE
7 GRANTORS AND OTHERS ACROSS A STRIP OF LAND 21.00
8 FEET IN WIDTH LYING NORTHERLY OF AND ADJOINING
9 THE NORTH LINE OF PARCEL 1, ABOVE."

10 APN: 104-311-15-00;

11 4. Defendants' *ex parte* motion for request for ruling is **GRANTED** [doc. #25]; and

12 5. The Clerk of the Court shall maintain this case as an open case until resolution of
13 the order to show cause why sanctions should not be imposed upon plaintiff's counsel Kent C.
14 Wilson.

15 **IT IS SO ORDERED.**

16 DATED: September 7, 2010

17 
18 M. James Lorenz
19 United States District Court Judge

20 COPY TO:

21 HON. WILLIAM MCCURINE, JR.
22 UNITED STATES MAGISTRATE JUDGE

23 ALL PARTIES/COUNSEL

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